Index.

CITATIONS.

Cases:

IN THE

Supreme Court of the United States

October Term, 1955.

No. 821

PENNSYLVANIA RAILROAD COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN,
Petitioners,

vs.

N. P. RYCHLIK, individually and on behalf of and as representative of other employees of the Pennsylvania Railroad,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Questions Presented.

1. Is the decision of a System Board of Adjustment, established under Section 3, Second of the Railway Labor Act subject to judicial review, where the Board is comprised of an equal number of representatives from the carrier and from the labor organization charging and prosecuting the cited employees with non-compliance of the Union Shop Agreement, and where the employees' job

and seniority rights depend on whether the Board finds a rival labor organization to be national in scope?

2. Does Section 3, First (f), which provides an administrative procedure for a labor organization to be determined to be national in scope for the purpose of securing representation on the National Railroad Adjustment Board, provide an adequate remedy to an employee-member of a rival labor organization for lack of due process where the same interested organization acts as accuser, prosecutor, judge and jury in determining whether an employee has complied with the Union Shop Agreement?

Statement of the Case.

On April 19, 1956, the United States Court of Appeals for the Second Circuit denied the petitioners' motion to stay proceedings on the mandate and also denied respondent's counter-motion for injunction pending appeal.

Reasons For Not Granting the Writ.

1. Respondent can not accept petitioners' "Questions Presented." Petitioners' first question is broader than the case. Appellee is not contending, and never has contended, that the decision of the System Board is subject to review by a District Court solely because representatives of the labor organization representing employees of the carrier are members of such Board and participated in the decision. What we are contending and what the Court below held is that there must be review from the decision of the Board where half of that Board is composed of members of the same union which cited and prosecuted the charges against the employee, and where the same half of the Board belong to the very organization which has the most vital interest in having a rival organization

declared not to be national in scope. That this procedure which allows union representatives to act as prosecutor, judge and jury, is unfair, was recognized by the Sixth Circuit in *Pigott, et al., v. Detroit T. R. R. Co.*, 116 F. Supp. 949, affirmed 221 F. 2d 736, as well as the Court below. Thus, District Judge Levin, in an opinion cited with approval by the majority in the Court of Appeals in the *Pigott* case, *supra*, stated:

> "Because of the conflict of interests between the established union and a 'new' union, the National Railroad Adjustment Board is not a competent agency to review the qualifications of such a labor organization. With half of its members selected by the established union, it is not likely that they would regard with equanimity the claim of a 'new' union, a rival to one or more of the members' organizations. This pressure to protect the vested interest would be even greater were the matter to be heard by a System Board of the type before which the plaintiffs appeared in the instant case. That Board, as has been stated, was made up of one representative of the railroad and one representative of the Brotherhood." (p. 954).

Thus, the "veritable Pandora's Box" read into the decision of the Court below by petitioners (see page 11 of the petition) is in reality a "no trespassing" sign which the Court below erected to prevent the abuses inherent in the form of a self-perpetuating procedure the petitioners are asking this Court to approve.

A similar decision with almost identical facts was made by the Court of Appeals for the District of Columbia in *Edwards v. Capital Airlines*, 176 F. 2d 755, cert. den. 338 U. S. 885, decided in 1949, without opening a "veritable Pandora's Box." As a matter of fact, in the seven years since the decision in the *Edwards* case, *supra*, that case has been cited but six times, not including the present

case. Only four of these cases citing the *Edwards* case, *supra*, dealt with the Railway Labor Act,[1] all of them approving the *Edwards* case, *supra*, as good law. In 1953, *Farris v. Alaska Airlines*, 115 Fed. Supp. 909, a case approving a limited review of the decisions of System Boards, specifically recognized the exception drawn by the *Edwards* case, *supra*, and no flood of litigation followed.

2. The fundamental issue is the second question. Does Section 3, First (f) provide an adequate statutory remedy to the obvious bias of the System Board and if it does, does this deprive a Federal Court of jurisdiction to review the decision of the System Board? It is on this point that the majority in the *Pigott* case, *supra*, and the three judges who decided the case in the Court below are in conflict.

Section 3, First (f) of the Act, provides that a union must be "national in scope" in order to participate in a selection of labor members to the National Railroad Adjustment Board. It defines the procedure which a union must follow to be eligible to select members to the National Railroad Adjustment Board. First, a union must request of its rival labor organizations already on the Board the right to participate on the Board, and bring about a dispute as to its right to participate. Given such a dispute, the Secretary of Labor refers it to the three-man Board provided by Section 3, First (f), and such Board will decide whether the petitioning organization is qualified: that is, whether *among other things*, it is "national in

[1] *Barbee v. Capital Airlines*, 191 F. 2d 507 (deals with another aspect of the *Edwards* case—veteran's rights); *Dwellingham v. Thompson*, 91 Fed. Supp. 787 (cites *Edwards* case as standing for review of System Board action); *Farris v. Alaska Airlines*, 115 Fed. Supp. 909 (discussed *supra*); *Nichols v. National Tube Co.*, 122 Fed. Supp. 727 (does not deal with RLA but cites *Edwards* case because of conflict in interest of bargaining representative); *Sadler v. Union Railroad Co.*, 125 Fed. Supp. 912 (cites *Edwards* case as standing for proposition of review of System Board action); *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239 (dissenting opinion).

scope." It is this procedure which the majority in the *Pigott* case, *supra,* held was the *sole* manner in which national in scope status may be obtained, not only for the purpose of selecting labor members to the Board but also for the purpose of obtaining a so-called privileged standing as a union, membership in which constitutes compliance with the Union Shop Agreements. The petition alleges that this is an adequate remedy to any alleged bias of the System Board and the *sole* manner in which national in scope status may be obtained.

But, this Court has already indicated that the determination of the three-man Board under Section 153, First (f) is *not* the sole way in which national in scope status may be attained. Thus, in *Order of Railway Conductors v. Swan,* 329 U. S. 520, 522-523, 91 L. ed. 471, 475, this Court characterized the Railroad Yardmasters of America as a "national labor organization" although that organization had failed to place any representatives on any one of the four divisions of the National Railroad Adjustment Board. In that case this Court referred to the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, both of which organizations have representatives on the National Railroad Adjustment Board, as "national labor organizations." The Court then stated:

> "But that contention is contradicted by the railroad Yardmasters of America, a national labor organization composed almost entirely of yardmasters and claiming to represent more than 70 per cent of all the yardmasters in the country. That organization, * * * *has failed to place a representative on any of the four divisions*" (p. 523) (italics supplied).

Either petitioners claim this Court used extremely loose language in referring to the Railroad Yardmasters of America as a "national railroad organization," or they are imposing a highly artificial construction on the Rail-

way Labor Act when they urge that the sole manner of acquiring national in scope status is before the three-man Board set up under Section 153, First (f). What petitioners are doing is solidifying a "jurisdictional frustration on an administrative level". (*Swan* case, *supra*, p. 524).

Further, this Court has recently held that a Federal Court is empowered to determine whether a labor organization is a "national or international organization." The National Labor Relations Board, which did not have representatives of the labor organization in question sitting on its panel, had held that such organization fell within the purview of the statutory phrase. This Court affirmed a Federal Court decision which determined otherwise (*NLRB v. Highland Park Mfg. Co.*, 341 U. S. 322). As Judge Allen stated in the dissenting opinion in the *Pigott* case, *supra:*

> "It is equally appropriate for a Federal Court to determine whether a labor organization is 'national in scope.' The expertise demanded in one case is no greater than the other. If Congress intended the geographic subjectives to have other than their ordinary civil meaning it would have given them a special meaning by definition" (p. 743).

In *U.R.O.C. v. Pennsylvania Railroad Company*, 212 F. 2d 938 (C. A. 7), the Court decided only that the employee must first exhaust his remedies before the System Board or the National Railroad Adjustment Board. The Court recognized, but only in dictum, the procedure specified in Section 3, First (f) of the Act, but assumed that this was not the only way in which "national in scope" status might be obtained. Thus the Court stated:

> "It is evident from these provisions of the Act that only those labor organizations which are na-

> tional in scope may participate in the selection of labor members of the Adjustment Board, though, of course, an organization could have such status without so participating'' (pp. 942-943).

Petitioners argue that the position adopted by the Court below in this case rejects the basic assumption of the Railway Labor Act that family quarrels in the Railroad industry should be settled exclusively within the confines of the structure erected by the Act. But, the landmark case which established petitioners' basic assumption, *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, specifically excluded a case like the one at bar from the basic assumption which petitioners advance. Thus this Court stated in Footnote 7 at page 244 of its opinion:

> "We are not confronted here with any disagreement or conflict in interest between an employee and his bargaining representative, as in *Steele v. Louisville and N. R. Co.*, 323 U. S. 192, 89 L. ed. 173, 65 Sct. 226. Nor are we called upon to decide any question concerning judicial proceedings to review board action or inaction."

Finally, petitioners argue that the decision below violates Congressional intent. But, if this is so, why did Congress take pains to amend Section 2, Fourth and Section 2, Fifth of the Act, in order to make them consistent with the Union Shop provisions, and completely fail to amend Section 3, First (f) to extend its coverage to include questions of compliance with the Union Shop Agreement or define "national in scope."

3. We agree that this case raises important and novel problems in the administration of the Railway Labor Act, but do not agree that now is the time for review by this Court. If the Court decides to review the present case now, it will only be deciding half a case. The basic question inherent in this case is what is the defintion of na-

tional in scope, and more exactly when is a union "national in scope." That issue is not presented by this case at its present posture, and it will not be presented until the case is remanded to the District Court for trial in accordance with the opinion of the Court below. The cases cited clearly show that there is a judicial right to review the decisions of the System Board, and that Section 3, First (f) is not the only way in which national in scope status may be attained. The exception to the judicial thinking on these issues is the majority opinion in the *Pigott* case, *supra*. Would it not be wiser and more in accord with the guiding principles set down by this Court in its rules for review, if the Court waited until all of the issues are presented? At that time, if the Court so desires, the issues presented by this petition together with the entire issue of when is a union national in scope can be reviewed.

CONCLUSION.

For the foregoing reasons, the petition for a writ of Certiorari to the United States Court of Appeals for the Second Circuit should be denied.

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